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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,170	01/14/2004	Rhonda Schrader	35049-95382	3547

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EXAMINER

PRINCE, FRED G

ART UNIT PAPER NUMBER

1724

DATE MAILED: 10/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/757,170

Applicant(s)

SCHRADER, RHONDA

Examiner

Fred Prince

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. <u>1005</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 7-9, 16-18, 22-25, 28, and 29 are again rejected under 35 U.S.C. 102(b) as being anticipated by Trail (US Pat No 4,181,612).

Trail teaches an apparatus (Figs. 1-2) for servicing a bird cage comprising an animal enclosure comprising a bird cage (4) that has a permeable floor (12), a hopper (10) configured to permit draining of water, an inherent animal support (68), the receptacle having an edge (1. at the top of trough 10, 2. where trough 10 and tube 14 meet, and 3. the bottom of tube 14) and defining a cavity permitting passage therethrough of the water and waste from the enclosure, a filtration unit (16), a pump (18) delivering water from the filtration unit (16) back to the receptacle (10) to permit circulation water (see Figures 1 & 2 and column 3 line 48-column 4 line 53), the water inherently containing a "fragrance" as it contains ammonia.

Per claims 9, 23, and 25, it is noted that applicant recites generic "support". It is submitted that the grid (68) is a generic "support".

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3-6 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Trail in view of Karlson (US Pat No 1,771,492).

Trail is described above. Trail does not disclose a tray having the recited features.

In any case, Karlson discloses a tray (5) having three sides and a void in order to, for instance, facilitate good footing to animals and provide flexibility to the configuration of the apparatus (page 1, lines 65-74).

Accordingly, it would have been readily obvious for the skilled artisan to have modified the system of Trail such that it includes the recited tray in order to, for instance, facilitate good footing to animals and provide flexibility to the configuration of the apparatus, as suggested by Karlson.

Per claims 5-6, Trail, as modified by Karlson, fails to disclose adjustably sloping the tray with a screw.

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It is submitted that it is well within the purview of the skilled artisan to adjustably slope a separator via a screw in order to, for instance, quickly and efficiently remove solids from a slurry.

5. Claims 10-15, 19-21, 26-27, and 30 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Trail.

Trail is described above. Trail further discloses that the filtration unit further comprises a screen (28), and carbon filter (32; col. 4, lines 5-7), wherein the filter supports bacteria enhancing biological treatment (col. 4, lines 43-48). Trail fails to disclose an additional porous filter layer.

It would have been readily obvious to the skilled artisan to provide the a filter with an additional porous layer in order to provide additional treatment to the water.

Per claims 13-14, 19-20, 26, and 30 Trail do not disclose a UV sterilization unit.

It would have been obvious for the skilled artisan to have added a UV sterilization unit to the system of Trail in order to provide additional treatment to the water treated in the system.

Per claims 15, 21, 27, and 30, Trail do not disclose an automatic shut-off control the pump.

It is well within the purview of the skilled artisan to use a float to automatically control a pump, in order to, for example, control the level of fluid in a receptacle.

***Response to Arguments***

Applicant's arguments filed August 23, 2005 have been fully considered but they are not persuasive. applicant argues that Trails does not teach a cavity having an edge permitting passage of liquid. The examiner disagrees. Trail clearly shows in Fig. 1 a receptacle creating an edge where the trough and tube meet. Trail further discloses terminal edge at the top of the trough and a terminal edge at the bottom of the tube 14 of Trail. Accordingly, whether applicant's scope is merely an edge, as claimed, or a terminal edge, which is clearly not claimed, the system taught by Trail is well within the scope of the claim.

Applicant argues that a funnel-shaped sump may not hold liquid because the liquid drains into a J-shaped trap and there may not be a constant body of liquid because of intermittent operation of a spray head located below at the bottom of the trough, resulting in insufficient coverage of the trough and droppings on the wall of the trough. Again, the examiner disagrees. It is noted that constant flow of liquid is clearly a process limitation that fails to add any structure to the system claimed and is, rather, merely functional language. Further, it is noted that a pump is capable of being operated continuously by simply not turning off said pump. Moreover, it is noted that the spray head (72) of Trail is located above the trough and indeed does cover the entire trough surface as the spray head is pivotable (col. 5, lines 36-44). Accordingly, applicant's claimed invention is not patentably distinguished over the prior art.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

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any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

***Terminal Disclaimer***

6. The terminal disclaimer filed on August 23, 2005 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US Pat No 6,895,899 has been reviewed and is accepted. The terminal disclaimer has been recorded.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References are cited of interest to show the state of art.
8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Prince whose telephone number is (571) 272-1165. The examiner can normally be reached on Monday-Thursday, 6:30-4:00; alt. Fridays 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Fred Prince  
Primary Examiner  
Art Unit 1724

fgp  
10/20/05